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Paper No. 18
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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re A.D. 1619 Company

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Serial No. 75/628,267

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William S. Frommer of Frommer Lawrence & Haug LLP for A.D. 1619 Company.

Stacy B. Wahlberg, Trademark Examining Attorney, Law Office 113 (Odette Bonnet, Acting Managing Attorney).

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Before Simms, Hohein and Chapman, Administrative Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

A.D. 1619 Company (a New York partnership) has filed an application to register the mark BRILL BUILDING on the Principal Register for services identified as amended as "entertainment services, namely, provision of background, backdrops and visual settings for motion pictures, television broadcasts, and video and sound recordings" in International Class 41.[1] The application is based on Section 1(a) of the Trademark Act, with applicant claiming

[1] Application Serial No. 75/628,267, filed January 26, 1999.

a date of first use and first use in commerce of March 1931.

In response to the Examining Attorney's refusal to register the mark as primarily merely a surname under Section 2(e)(4) of the Trademark Act, and in response to certain procedural requirements, applicant disclaimed the term "building," and included a claim that the mark has acquired distinctiveness under Section 2(f) of the Trademark Act.

The Examining Attorney then withdrew the refusal to register under Section 2(e)(4), but made final the requirement for new specimens of use. Along with applicant's request for reconsideration, it submitted substitute specimens, as well as a declaration that the substitute specimens were in use prior to the filing date of the application. Thus, the only issue before the Board is whether applicant's specimens of use show use of the mark BRILL BUILDING for the identified entertainment services in International Class 41.

The original specimen submitted by applicant is a photograph of applicant's building showing the words BRILL BUILDING appearing above the entrance doors, and the substitute specimens consist of a compilation of

promotional and advertising materials, distributed individually or as a package.

When the refusal to register was made final on the ground that the specimens submitted by applicant do not show use of the mark for the entertainment services identified in the application, applicant appealed. Briefs have been filed, but applicant did not request an oral hearing.

The Examining Attorney's position is essentially that the specimens merely show that tenants in applicant's building engage in entertainment services, but fail to demonstrate use of the mark in association with the identified services, "entertainment services, namely, provision of background, backdrops and visual settings for motion pictures, television broadcasts, and video and sound recordings"; and that consumers would not perceive applicant as the source of the involved entertainment services. See Section 45 of the Trademark Act and Trademark Rule 2.56.

Applicant essentially contends that both the original specimens and the substitute specimens support use of the mark in association with the identified entertainment services, involving the *provision* of background, backdrops and visual settings; and that the specimens for service

marks need not contain a statement as to the nature of the services.

The requirements for specimens of use of a mark in connection with services differ from the requirements for specimens of use of a mark in connection with goods. Although trademarks appear directly on the goods or on the containers or labels for the goods or displays associated therewith, service marks are used in connection with the services. Implicit in the statutory definitions of a "service mark" is the requirement that there be some direct association between the mark and the services, i.e., that the mark be used in such a manner that it would readily be perceived as identifying the source of such services. See In re Advertising & Marketing Development, Inc., 821 F.2d 614, 2 USPQ2d 2010 (Fed. Cir. 1987); and In re Adair, 45 USPQ2d 1211 (TTAB 1997).

In this situation, we agree with the Examining Attorney that the specimens submitted by applicant do not show that applicant is engaged in the identified International Class 41 services or that applicant uses the mark in the sale or promotion of these services. Thus, consumers would not associate the mark with the entertainment services listed in the application.

The original specimen is merely a photograph of the front entrance of a building (located at 1619 Broadway in New York City) with the words BRILL BUILDING appearing over the doors, and is not sufficient to demonstrate that applicant engages in entertainment services, namely, the *provision* of background, backdrops and visual settings. The packet of promotional and advertising material included items such as photographs of the entire building (with no visible reference to the mark BRILL BUILDING); typed pages of information on the building itself (including statements that the building is mentioned in literature and has appeared in television broadcasts such as local news shows, Access Hollywood, Saturday Night Live; that a mock-up of the building served as a backdrop in Broadway and off-Broadway productions of the show "Leader of the Pack"; and that the building (opened in 1931) has historically housed tenants linked to the entertainment industry. The packet of advertising material also includes information that there is a screening room in the building called The Broadway Screening Room. However, in applicant's brochure about the screening room, the only use of the words "The Brill Building" is as a trade name use or as part of applicant's address. See In re Diamond Hill Farms, 32 USPQ2d 1383

(TTAB 1994). In any event, screening room services are not included in applicant's identification of services.

Although the record is not clear as to precisely what is meant by applicant's "entertainment services, namely, provision of background, backdrops and visual settings for motion pictures, television broadcasts, and video and sound recordings," it appears from this record that applicant simply allows production companies to film or tape scenes in front of or around the building, and we fail to see how that rises to the level of an entertainment service. There is no evidence or even argument in the record that applicant provides movie or television settings to the order and specification of others. The mere fact that the words BRILL BUILDING appear over the entrance doors to the building and that said entrance and/or other parts of the building (such as the lobby or the elevator cab) have been shown in recorded/filmed scenes does not establish that the words perform the function of identifying applicant's entertainment services with applicant recognized as the source thereof. That is, consumers, including industry professionals, seeing applicant's building in a scene will not perceive such use of the mark BRILL BUILDING as identifying applicant as the provider of entertainment

services, namely, the provision of backgrounds, backdrops and other visual settings for movies, television and recordings. Rather, purchasers or users of applicant's services would see it only as the name of applicant's building. See In re MediaShare Corp., 43 USPQ2d 1304 (TTAB 1997). Cf. In re Eagle Fence Rentals, Inc., 231 USPQ 228 (TTAB 1986).

Decision: The refusal to register on the basis that none of the specimens show use of the mark in connection with the identified services is affirmed.